



0000065648

RECEIVED
AZ CORP COMMISSION

Oct 7 2 38 PM '96

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

DOCUMENT CONTROL

OCT 7 1996

RENZ D. JENNINGS
Chairman
MARCIA WEEKS
Commissioner
CARL J. KUNASEK
Commissioner

DOCKETED BY

RT

IN THE MATTER OF COMPETITION
IN THE PROVISION OF ELECTRIC
SERVICES THROUGHOUT THE STATE
OF ARIZONA

DOCKET NO. U-0000-94-165

EXCEPTIONS TO PROPOSED
STAFF ORDER OF AEPCO,
DUNCAN VALLEY ELECTRIC
COOPERATIVE, GRAHAM ELECTRIC
COOPERATIVE, SULPHUR SPRINGS
VALLEY ELECTRIC COOPERATIVE,
AND TRICO ELECTRIC
COOPERATIVE

On October 9, 1996, the Commission is scheduled to vote on Proposed Rules concerning retail electric competition ("Proposed Rules"). Because of time constraints, these exceptions will be limited to a single issue.¹

The Cooperatives suggest a different way for the Commission to deal with their unique circumstances than the approach offered in the Proposed Rules. We believe this alternative allows better use of both Commission and cooperative resource and also provides, as does Staff's approach, a mechanism for continued Commission involvement in the process.

By way of brief background, in Comments filed with the ACC on the Draft Rules, the Cooperatives, the Rural Utilities Service

¹ The Comments of Arizona's Electric Cooperatives on the Draft Rules dated September 12, 1996, are incorporated herein by this reference. While the Proposed Rules addressed certain of the issues raised by the Cooperatives in those Comments, many other issues raised by the Cooperatives and others have not been adequately addressed by these Proposed Rules.

1 ("RUS"), the National Rural Electric Cooperative Association and the
2 National Rural Utilities Cooperative Finance Corporation ("CFC")
3 described several impacts unique to cooperatives. Among them are:

- 4 ° The Rules will endanger the Cooperatives' tax
 exempt status.²
- 5 ° The Rules will frustrate the purpose of the
6 Federal Rural Electrification Act.
- 7 ° The Rules will cause mortgage defaults on the
 Cooperatives' loans.
- 8 ° The Rules will impair the contractual
9 relationships among the retail consumer/member,
10 the distribution cooperative and the G&T
11 supplier upon which the RUS/CFC financing
12 system is based.

11 In light of these issues, the Cooperatives suggested that they be
12 removed from the list of Affected Utilities.

13 Staff responded to these concerns by adding a new
14 paragraph H to Proposed Rule R14-2-1604. This provision allows an
15 electric cooperative to request that the Commission modify the
16 competitive phase schedule "so as to preserve the tax exempt status
17 of the cooperative or to allow time to modify contractual
18 arrangements pertaining to delivery of power supplies and associated
19 loans." While the Cooperatives acknowledge and appreciate Staff's
20 attention to their issues, they see two primary problems with this
21 approach.

24 ² The FERC recognized this problem in its Order 888,
25 Footnote 499, and did not require reciprocal transmission service
26 by a G&T if providing it would jeopardize its tax exemption.

1 First, since each cooperative would have to file tariffs
2 by the end of 1997 if schedule modification is not obtained, waiver
3 requests will have to be submitted as soon as possible next year.
4 As a practical matter, neither the Cooperatives nor the Commission
5 will know anything more about these problems in January than we know
6 in October. Resolution of these issues requires contract
7 negotiations among the G&T and its distribution members, possibly
8 structural and/or other changes inside the Cooperatives, and
9 modifications of mortgage instruments along with consultations with
10 and actions by the RUS, the CFC, the Internal Revenue Service, and
11 possibly, the United States Congress.

12 In May of this year, AEPCO and its member distribution
13 cooperatives began this process by establishing a structures working
14 group. Since that time it has been examining ways in which the all
15 requirements contract and the G&T/distribution relationship might be
16 modified so as to protect existing member rights and preserve
17 current financing but also allow the cooperatives greater
18 flexibility and choice as to future power options. Once a solution
19 is found to this complex problem, AEPCO and its members will then
20 have to consult with RUS and CFC to determine whether the
21 restructured relationship is acceptable to the systems' primary
22 lienholders. Although we hope to achieve substantial progress next
23 year, a waiver process only a few months from now will not allow
24 time for any meaningful progress to be accomplished nor additional
25 data to be supplied to the Commission on this issue.

1 Secondly, the waiver process would add as many as seven
2 proceedings to what is already a crowded Commission agenda.
3 Workshops on a wide variety of issues are anticipated during the
4 first half of 1997. The waiver process will add considerably to
5 this already formidable regulatory workload. Also, the waiver
6 process will take time and resource away from the Cooperatives'
7 ability to focus their attention on resolving the tax exemption,
8 mortgage and other contractual issues which inhibit their ability to
9 participate competitively.

10 In light of the foregoing, the Cooperatives would suggest
11 that the Proposed Rules be modified as follows:

12 1. Delete the Cooperatives from the definition of
13 "Affected Utilities" in Rule R14-2-1601.1; and

14 2. Delete paragraph H from Proposed Rule R14-2-1604 and
15 substitute the following:

16 H. By December 31, 1997, Arizona electric
17 cooperatives shall file with the
18 Commission a report describing the status
19 of their efforts to address and resolve
20 tax exemption, contractual and federal
21 financing issues which affect their
22 ability to participate in a competitive
23 market. If such issues have been resolved
24 by that date, such report shall include a
25 proposed timetable under which the service
26 territories of the electric cooperatives
may be opened to competition as described
in this Rule. An electric cooperative at
any time may elect to participate in this
article pursuant to the provisions of R14-
2-1611.B.

27 This alternative would allow the Cooperatives to focus
28 their efforts on resolving issues unique to them. It would, as

1 well, keep the Commission fully informed as to their efforts in that
2 regard.

3 In light of the foregoing, the Cooperatives request that
4 the Commission amend the Proposed Rules as set forth herein.

5 RESPECTFULLY SUBMITTED this 7th day of October, 1996.

6 JOHNSTON MAYNARD GRANT AND PARKER, P.L.C.

7

8

By Michael M. Grant

9

10

Michael M. Grant
2300 Great American Tower
3200 North Central Avenue
Phoenix, Arizona 85012
Attorneys for the AEPCO, Duncan
and Graham Cooperatives

11

12

and

13

14

Patricia Cooper, Esq.
Arizona Electric Power Cooperative,
Inc.
P.O. Box 670
Benson, Arizona 85602

15

16

and

17

18

Christopher Hitchcock, Esq.
Hitchcock, Hicks & Conlogue
Copper Queen Plaza
P.O. Box 87
Bisbee, Arizona 85603-0087
Attorneys for Sulphur Springs Valley
Electric Cooperative

19

20

21

and

22

23

Russell E. Jones, Esq.
O'Connor Cavanagh Molloy Jones
33 North Stone, Suite 2100
P.O. Box 2268
Tucson, Arizona 85702-2268
Attorneys for Trico Electric Cooperative

24

25

26

1 Original and 10 copies of the
2 foregoing were filed this 2nd
day of October, 1996, with:

3 Docket Control
4 Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

5 Copy of the foregoing hand-delivered
6 this 2nd day of October, 1996, to:

7 Chairman Renz D. Jennings
8 Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

9 Commissioner Marcia Weeks
10 Arizona Corporation Commission
1200 West Washington
11 Phoenix, Arizona 85007

12 Commissioner Carl J. Kunasek
13 Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

14 *K. Hiler*

15 h:\users\mgrant\mmgdocs\0333-1.doc

16

17

18

19

20

21

22

23

24

25

26